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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/609,016	06/30/2000	Franco X. Milani	3248	2127
35420	7590	03/11/2004		
MICHAEL P. MAZZA, LLC 686 CRESCENT BLVD. GLEN ELYN, IL 60137			EXAMINER WEINSTEIN, STEVEN L	
			ART UNIT	PAPER NUMBER

1761

DATE MAILED: 03/11/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/609,016

Applicant(s)

MILANI ET AL.

Examiner

Steven L. Weinstein

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 9/4/03
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 1-14, 16-34, 36-38, 40, 43-60, 63, 64, 66-82
- 4) ☒ Claim(s) _____ is/are pending in the application.
- 4a) Of the above claim(s) 44-59 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-14 is/are rejected. 16-34, 36-38, 40, 43, 60, 63, 64, 66-82
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s) _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

The amendment filed 9/4/03 is objected to under 35 U.S.C. 132 because it introduces New Matter into the disclosure. 35 U.S.C. 132 states that no amendment shall introduce New Matter into the disclosure of the invention. The added material which is not supported by the original disclosure is as follows: the change in the definition of "maintaining individual product identity" on page 7, last paragraph appears to be New Matter. The amendment eliminates "Visually" and instead states that the difference may be discerned by using attributes of color, texture, or organoleptic or "other" differences. One would not necessarily be able to discern "different" food items visually by texture or organoleptic differences. The problem is, the word "different" is nowhere defined in the specification except by this one paragraph and the only specific examples are peanut butter and jelly. This phrasing would open the disclosure up to the same food product with the same taste and texture with the only difference being coloring agents or as used by the specification, "other" differences. There is no specific support in the specification as originally filed for this breadth. Although the original specification uses the phrase "visually discerned", this could be peanut butter and jelly. It is again emphasized that the phrase maintaining individual product identity only means that the two phases of different food items are maintained by seeing them at the surface. This phrasing did not define the word different. Note, too, the last part of the added phrase " or other differences" broadens the scope even further and is unclear.

Applicant is required to cancel the new matter in the reply to this Office Action.

Claims 1-14, 16-34, 36-38, 40,43,60,63,64, and 66-82 are rejected under 35 USC112, first paragraph for the reasons given in the last Office action. Contrary to what

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has been urged in applicants amendment filed 9/4/03, there is no indication in the specification that peanut butter was considered a gelled product. On page 7 of the specification, jelly is defined as gelled food products and no mention is made of peanut butter as a jelly or gelled food product.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP§706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

All of applicant's remark filed 9/4/03 have been fully and carefully considered but are not found to be coming for the reasons given above.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steven Weinstein whose telephone number is (571) 272-1410. The examiner can normally be reached on Monday-Friday 7:00am to 3:30 pm.


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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on (571) 272-1398. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (571) 272-1401

S. Weinstein/af
March 5, 2004

2/23


STEVE WEINSTEIN
PRIMARY EXAMINER 1761
3/5/04